

**ORIGINAL**

**NEW APPLICATION**



0000140845

BEFORE THE ARIZONA CORPORATION COM.

GARY PIERCE  
Chairman  
BOB STUMP  
Commissioner  
SANDRA D. KENNEDY  
Commissioner  
PAUL NEWMAN  
Commissioner  
BRENDA BURNS  
Commissioner

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Arizona Corporation Commission

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In the Matter of the Joint Application of  
(1) Level 3 Communications, LLC, Broadwing  
Communications, LLC, WilTel Communications,  
LLC, and Global Crossing Telecommunications,  
Inc. for a Limited Waiver of the Public Utility  
Holding Companies and Affiliated Interest Rules  
(A.A.C. R14-2-801 et seq.) or, in the alternative,  
Approval of Guarantee under A.A.C. R14-2-804;  
and  
(2) Level 3 Communications, LLC, Broadwing  
Communications, LLC, WilTel Communications,  
LLC, and Global Crossing Telecommunications,  
Inc. for Authorization to Encumber and/or  
Mortgage their Assets

Docket Nos.

T-03654A-12-0487  
T-04176A-12-0487  
T-03708A-12-0487  
T-02438B-12-0487

**VERIFIED JOINT APPLICATION FOR  
LIMITED WAIVERS OF THE PUBLIC UTILITY HOLDING  
COMPANIES AND AFFILIATES INTEREST RULES (A.A.C. R14-2-801 et seq.)  
AND APPROVAL TO ENCUMBER AND/OR MORTGAGE ASSETS**

Pursuant to A.A.C. R14-2-806, Level 3 Communications, LLC ("Level 3 LLC"), Broadwing Communications, LLC ("Broadwing"), WilTel Communications, LLC ("WilTel"), and Global Crossing Telecommunications, Inc. ("GC Telecommunications" and collectively, the "Applicants") request a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806 (the "Rules"), in connection with a term loan arrangement completed by Level 3 Communications, Inc. ("Level 3") and Level 3 Financing,

Inc. ("Financing") for a total amount of \$1.2 billion under which Applicants will provide guarantees. In the alternative, Applicants request, to the extent necessary, approval under A.A.C. R14-2-804 for Applicants to provide the guarantees for the new financing arrangement. Additionally, Applicants request an order from the Commission under A.R.S. § 40-285 authorizing the pledge, mortgage, lien and/or encumbrance of their Arizona utility plant and assets in connection with Applicants' participation in the new financing arrangement. As described herein, Level 3 and Financing entered into the \$1.2 billion term loan arrangement to refinance two tranches of term loans into a single loan at a lower interest rate and to reduce annual interest expenses by approximately \$12 million.

### **DESCRIPTION OF APPLICANTS**

Level 3 Communications, Inc. ("Level 3") is a publicly traded (NASDAQ: LVLTL) Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. Level 3 provides high-quality voice and data services to carriers, internet service providers ("ISPs"), and other business customers over its IP-based network through its wholly owned indirect subsidiaries, including the Applicants. The Applicants are non-dominant carriers that are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. Applicants are also authorized by the Federal Communications Commission to provide international and domestic interstate services as non-dominant carriers.

In Arizona, the Applicants hold the following authorizations:

1. Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a CCN granted in Decision No.

61737 issued by the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.

2. Broadwing<sup>1</sup> is authorized to provide resold and facilities-based interexchange service pursuant to a CC&N granted in Decision No. 66105 issued in Docket No. T-04176A-03-0186 on July 25, 2003.
3. Global Crossing<sup>2</sup> is authorized to provide interexchange telecommunications services pursuant to its CCN granted by Decision No. 54505 issued by the Commission in Docket No. U-2438-84-101 on April 29, 1985 as expanded by Decision 60501 issued on November 25, 1997.
4. WilTel<sup>3</sup> is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to a CCN granted in Decision No. 62025 issued by the Commission in Docket No. T-03708A-99-0074 on November 2, 1999.<sup>4</sup>

Based on each of their operational revenues,<sup>5</sup> Level 3 LLC, WilTel and Global Crossing are considered Class A utilities and, therefore, subject to the Rules.

### **CONTACT INFORMATION**

For the purposes of this Application, contacts for the Applicants are as follows:

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<sup>1</sup> At the time the CCN was issued, Broadwing was named C III Communications Operations, LLC.

<sup>2</sup> At the time the CCN was issued, Global Crossing was named Allnet Communications Services, Inc.

<sup>3</sup> At the time the CCN was issued, WilTel was named Williams Communications, Inc.

<sup>4</sup> Global Crossing Local Services, Inc. is also authorized in Arizona to provide facilities-based local exchange telecommunications services pursuant to its CCN granted by Decision No. 61622 issued by the Commission in Docket No. T-03658A-98-0653 on April 1, 1999. (At the time the CCN was issued, GC Local was named Frontier Local Services, Inc.) However, Global Crossing Local Services, Inc. will not be a participant in the financing transaction described herein.

<sup>5</sup> Based on the 2011 Annual Reports filed with the Commission, Level 3 LLC, Global Crossing, and WilTel had greater than \$1 million in ACC- jurisdictional revenue. Based on the 2011 Annual Reports filed with the Commission, Broadwing (and Global Crossing Local Services, Inc.) had less than \$1 million in ACC-jurisdictional revenue and therefore is not considered a Class A utility.

For the Applicants:

Michael W. Patten  
Timothy J. Sabo  
Roshka DeWulf & Patten  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, AZ 85004  
Tel: 602-256-6100  
Fax: 602-256-6800  
Email: mpatten@rdp-law.com  
tsabo@rdp-law.com

and

Catherine Wang  
Danielle Burt  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
Tel: 202-373-6000  
Fax: 202-373-6001  
Email: catherine.wang@bingham.com  
danielle.burt@bingham.com

with copies to:

Richard E. Thayer  
Senior Counsel  
Level 3 Communications, Inc.  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Tel: 720-888-2516  
Fax: 720-888-5134

#### **DESCRIPTION OF THE FINANCING TRANSACTION**

Applicants request Commission approval to participate in a financing arrangement. Level 3 and Financing entered into the \$1.2 billion term loan arrangement to refinance into a single loan the \$650 million and \$550 million term loans for which the Applicants pledged assets and acted as guarantors pursuant to Commission approval.<sup>6</sup> The \$1.2 billion term loan has a 2019 maturity date and a 1% lower interest rate than the \$650 million and \$550 million term loans, resulting in a reduction of approximately \$12 million in annual interest expenses.

<sup>6</sup> The Commission previously granted approval for Applicants to pledge assets and act as guarantors in support of the \$650 million term loan on June 21, 2011, and the \$550 million term loan on February 17, 2012. See Decision No. 72431 and Decision No. 72889.

Financing has lent the proceeds of the \$1.2 billion term loan to Level 3 LLC, in return for an intercompany demand note. The funds were used to prepay in full the \$650 million and \$550 million term loans that were otherwise set to mature in 2018.

Applicants request Commission approval to pledge their assets and act as guarantors in support of the \$1.2 billion term loan arrangement. The assets at issue have been previously encumbered pursuant to prior Commission decisions.<sup>7</sup> However, Applicants emphasize that neither the pledge of jurisdictional assets nor the guaranty obligations described herein with respect to the new financing arrangement will be effective until all required regulatory approvals are obtained.

Applicants' participation in the new financing arrangement will not result in a change in Applicants' management or in their day-to-day operations; nor will it adversely affect Applicants' current or proposed operations in Arizona. Moreover, Applicants will not be encumbering any customer deposits or prepayments as part of the transaction.

The financing arrangement that is the subject of this request will enable the parent company to successfully refinance its term loans at a lower interest rate and to borrow funds under favorable extended maturity terms and reduced interest expenses. The financing arrangement will also provide the parent company with funding to maintain and expand Applicants' networks and services. This improved financial arrangement will enable Applicants to continue delivering services to new markets thus allowing more consumers to benefit from their competitive services. Accordingly, and to the extent required, Applicants request that the Commission approve the participation of Applicants in the financial arrangement described herein.

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<sup>7</sup> Id.

### **BASIS FOR LIMITED WAIVERS**

**A. The Proposed Financing Arrangement Will Not Directly or Indirectly Result in or Cause an Increase in Applicants' Maximum Rates on File with the Commission for Any Competitive Service.**

The Commission has granted partial waivers of the Rules. *See e.g.* Decision Nos. 64737, 68346 and 69212. In granting such waivers, the Commission determined that only when a transaction "could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service" would a company have to make the necessary filings under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. *See* Decision No. 64737. Indeed, the Commission has granted Level 3 LLC and its affiliates similar waivers in the past in comparable situations, namely the acquisitions of other telecommunications entities by Level 3 LLC's ultimate parent company. *See* Decision No. 72300 (Level 3 financing waiver approval). There is no reason to treat this transaction differently.

In Arizona, Applicants primarily provide competitive wholesale services to other carriers, VoIP providers, and Internet Service Providers. The market for such services is highly competitive and prices are set by competition. With every product pricing change initiated by Applicants, competitors inevitably introduce new services or reprice their service in a manner believed to be even more attractive to the consumer. Accordingly, Applicants have no incentive or ability to charge unduly high or above-market prices that could be used to fund or subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is harmful to Arizona consumers.

Moreover, Applicants will not be encumbering any customer deposits or prepayments as part of the transaction.

Finally, following the consummation of the financing arrangement, Applicants will continue to offer their services with no change in the rates or terms and conditions. Applicants do not anticipate that the financing arrangement will cause them to increase their maximum rates on file with the Commission for their competitive services.

**B. The Proposed Financing Arrangement Is Otherwise in the Public Interest**

Approval of the financing arrangement described herein will serve the public interest. The financing arrangement enables Applicants and their parent to refinance their obligations to extend the maturity dates of certain obligations at better interest rate terms, thus reducing the future refinancing risks associated with the scheduled maturities described herein. This step is a part of the companies' ongoing efforts to manage their maturity profile and continue to strengthen their overall credit profile. By eliminating risk associated with the uncertainties of future credit markets, it is expected that the capital markets and customers will view this step on the part of the companies favorably. As such, Applicants expect the financing arrangement will provide greater access to capital, which will yield both financial benefits and operational flexibility that will ultimately inure to the benefit of Applicants' Arizona customers and that existing and future customers will have a more favorable view of the financial health of Applicants. The financing arrangement will strengthen Applicants' financial position and their ability to bring competitive telecommunications services to consumers in the State of Arizona. Furthermore, the financing arrangement will be conducted in a manner that will be transparent to customers, and will not result in a change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Following consummation of the financing arrangement, Applicants will continue to provide high-quality communications services to their customers without interruption and without

immediate change in rates, terms or conditions. Accordingly, and to the extent required, Applicants request that the Commission approve their participation in the financing arrangement described herein.

**C. Verification.**

Under A.A.C. R14-2-806(B), any request for a waiver of the Rules must be made by verified application. Accordingly, attached hereto is the Affidavit of Richard E. Thayer, the Senior Counsel of Level 3 Communications, Inc., attesting to the accuracy of the factual statements in this Application.

**ALTERNATIVE REQUEST FOR APPROVAL UNDER RULE 804.**

**A. Introduction.**

If the Commission does not grant the limited waivers requested above, Applicants request that the Commission authorize Applicants to provide the guarantees under A.A.C. R14-2-804(B)(1), which contemplates there will be situations where a certificated public service provider will need to issue guarantees for a holding company. As set forth in more detail above, approval of this application will enable Applicants to complete a transaction and enter into the financing arrangement that will benefit the combined entity. This will strengthen Applicants, and it will also serve to promote competition in Arizona's telecommunications markets.

**B. Rule 804 information.**

Applicants' alternative request for approval under A.A.C. R14-2-804(B)(1) is in the public interest for the reasons already set forth above. Under A.A.C. R14-2-804(C), the Commission will review the proposed guarantee to "to determine if the transaction would impair the financial status of the public utility, otherwise prevent it from attracting capital at

fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.” This is often known as the “no impairment” standard. The proposed guarantee does not violate the no impairment standard because the financing arrangement will strengthen the financial status of the public utility, as described herein.

### **REQUEST FOR APPROVAL OF ENCUMBRANCE**

Under A.R.S. § 40-285(A), a “public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder” without approval from the Commission. Accordingly, the Applicants request approval to encumber any part of their “line, plant or system” located in Arizona in connection with the transactions described herein. The proposed encumbrance is described in “Description of the Financing Transactions” above. Moreover, Applicants will not be encumbering any customer deposits or prepayments. The encumbrance is in the public interest because it will enable the Applicants to complete the proposed financing transactions, thus strengthening their ability to compete in the highly-competitive telecommunications marketplace.

### **RELIEF REQUESTED**

WHEREFORE, Applicants respectfully request that the Commission:

1. Waive the requirement of A.A.C. R14-2-804(B) that Applicants obtain Commission approval, to the extent necessary, prior to Applicants providing guarantees in connection with the financing arrangement described herein, or in the alternative, authorize Applicants to provide a guarantee in support of such financing arrangement.

2. Waive any other applicable requirements of the Rules as they may apply to the financing transaction described herein.

3. Authorize under A.R.S. § 40-285 the pledge, mortgage, lien and/or encumbrance of the utility plant and assets of Applicants in connection with the financing arrangement described herein.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of December, 2012.

ROSKA DEWULF & PATTEN



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Michael W. Patten  
Timothy J. Sabo  
Roshka DeWulf & Patten  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, AZ 85004  
Tel: (602) 256-6100  
Fax: (602) 256-6800  
Email: mpatten@rdp-law.com  
tsabo@rdp-law.com

Attorneys for Applicants

ORIGINAL and thirteen (13) copies  
of the foregoing filed  
this 5<sup>th</sup> day of December, 2012, with:

The Arizona Corporation Commission  
Docket Control  
1200 W. Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered  
this 5<sup>th</sup> day of December, 2012, to:

Lyn Farmer, Esq., Chief Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Janice Alward, Esq., Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Steve Olea, Director  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

  
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**EXHIBIT A**

Verification of Joint Application

**VERIFICATION**

STATE OF COLORADO  
COUNTY OF BROOMFIELD

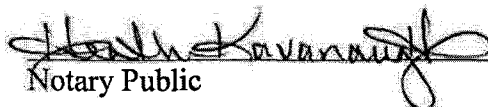
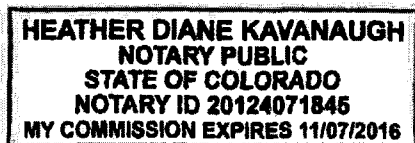
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I, Richard E. Thayer, state that I am Senior Counsel for Level 3 Communications, LLC; that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.



Name: Richard E. Thayer  
Title: Senior Counsel  
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 3<sup>rd</sup> day of December, 2012.

  
Notary Public

My commission expires: \_\_\_\_\_